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7 BANK OF AMERICA, N.A.

8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 In the Matter of
12 Itzel Catalina Perez

Bankruptcy Case No.09-41432EJ

Chapter 13

13 RS No.: BSN-01

14 **MOTION FOR RELIEF FROM**
15 **THE AUTOMATIC STAY**

16 **Hearing**

Date: October 7, 2011

17 Time: 10:00 a.m.

18 Place: Courtroom 215
1300 Clay Street
Oakland, CA 94612

19 _____ /

20 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

21 BANK OF AMERICA ("BOA"), a corporation and a creditor of debtor(s) Itzel
22 Catalina Perez hereby moves this Court, pursuant to 11 U.S.C. section 362(d), for an
23 order granting BOA relief from the automatic stay with respect to a certain 2007
24 HYUNDAI SANTA FE with Vehicle ID No. 5NMSH13E07H029880 (the "Property").

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1 **I.**

2 **PRELIMINARY STATEMENT**

3 1. The petition in the above-entitled bankruptcy case was filed on or about
4 02/25/2009, as a Chapter 13 proceeding. An Order confirming the Debtor's Chapter 13
5 Plan of Reorganization was entered on 05/13/2009.

6 2. BOA is the owner of a written Retail Installment Sale Contract
7 ("Contract") pursuant to which Debtor purchased the Property described above.

8 3. Said Contract is in default in that, as of September 1, 2011, debtor has
9 failed to pay the monthly payments due and owing on March 27, 2010 in the sum of
10 \$513.28 and each of the payments falling due thereafter. As of August 8, 2011 and
11 pending liquidation of the vehicle, the sum of \$16,238.53 is currently due, owing and
12 unpaid on account of the Contract

13 4. BOA is entitled to the relief requested on the basis of lack of adequate
14 protection resulting from said defaults; lack of equity on the part of 11 debtor, and other
15 sufficient cause under 11 U.S.C. section 362.

16 **II**

17 **Relief From The Automatic Stay Should Be Granted**

18 **With Respect To The Property**

19 1. Section 362(d) of the Bankruptcy Code authorizes this Court to grant relief
20 from the automatic stay:

21 (1) For cause, including the lack of adequate protection of an
22 interest in property of such party in interest; or

23 (2) With respect to the stay of an act against property under
subsection(a) of this section, if-

24 (A) The debtor does not have any equity in such
25 property; and

26 (B) Such property is not necessary to an effective
reorganization.

27 2. The facts set forth in the concurrently filed Declaration of in
28 Support of Motion for Relief From the Automatic Stay, for which the court is requested

1 to take judicial notice, establish the requisite cause, including lack of adequate
2 protection and lack of equity in the subject Property, to entitle BOA to relief from the
3 automatic stay. Moreover, the subject Property is a depreciating asset and the amount
4 owing under said contract has been steadily increasing as a result of the aforesaid
5 delinquency, and associated attorneys' fees and collections costs.

6 III

7 CONCLUSION

8 Based upon the foregoing, and any additional evidence which may be presented
9 at the time of the hearing on this motion, including a request that the Court take judicial
10 notice of the value of the aforementioned motor vehicle as set forth in the accompanying
11 declaration, Movant respectfully requests this Court to grant its motion for relief from
12 the automatic stay as follows:

13 (a) That the automatic stay with respect to the Property be modified so as to
14 permit Movant to foreclose its interest in said Property; and

15 (b) That the Order terminating the automatic stay with respect to said Property
16 not be stayed by the 14-day stay contemplated by Bankruptcy Rule 4001(a)(3) or
17 otherwise.

18 (c) For such other and further relief as the Court deems just and proper.

19 DATED: September 14, 2011 LAW OFFICES OF BENJAMIN NACHIMSON

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21 By: /s/ Benjamin Nachimson
22 Benjamin Nachimson
23 Attorneys for Movant
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